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IN UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF EMERICA,

Plaintiff,

vs.

ERNESTO MADRIGAL,

Defendant.

No. CR 21-0182 JD

DEFENDANT'S SUPPLEMENTAL
SENTENCING MEMORANDUM

On January 23, 2023 the parties appeared in court for sentencing. The case was continued to January 30, 2023 because the defendant was not transported to court. The Court asked the parties to address the appropriate guidelines calculations. The parties have submitted a joint filing addressing the calculations as to why there are differences in the calculations between the PSR submitted by Probation and the calculations submitted by the parties.

The defendant hereby submits separately to state his belief as to why the appropriate guidelines calculation is 27 and not 31.

The PSR accurately describes the defendant's conduct in paragraphs 5-17. On March 5, 2020, a confidential source (CS) negotiated with the defendant a purchase of one pound of methamphetamine for \$1250.00. Later that same day, Mario Ortiz Romero delivered 1,264 grams of methamphetamine to the CS. This delivery was a result of the one-pound transaction agreed to between the CS and Mr. Madrigal. One pound is approximately 454 grams. The 1264 grams

1 delivered to the CS by Mario Ortiz Romero is almost 3 times more methamphetamine than Mr.
2 Madrigal and the CS negotiated.

3 The above-described facts do not support the finding of a two-level enhancement
4 suggested by the PSR. Under U.S.S.G. section 3B1.1(c), a two-level enhancement is proper when
5 a defendant is “an organizer, leader, manager, or supervisor.” It is clear that Mario Romero Ortiz
6 delivered a different quantity to the CS. This demonstrates that Mr. Madrigal is not “an organizer,
7 leader, manager, or supervisor.” *U.S. v. Avila*, 95 F.3d 887 (9th Cir. 1996). Here, the defendant did
8 not “exercised control over others.” *U.S. v. Mares-Molina*, 913 F.2d 770, 773 (9th Cir. 1990).

9 There was an additional transaction negotiated on April 20, 2020 between the CS and Mr.
10 Madrigal. This was for the purchase to 250 pills of fentanyl for \$1750. This transaction occurred
11 on April 24, 2020 and an individual named Sergio Solano delivered the pills to the CS. Mr.
12 Madrigal was not convicted for this transaction. Accordingly, this transaction cannot be used to
13 make a two-level enhancement. *U.S. v. Tamez*, 941 F.2d 770 (9th Cir. 1991).

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15 Dated: January 26, 2023

Respectfully submitted,

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17 /s/Ruben Munoz
18 Ruben Munoz,
19 Attorney for Ernesto Madrigal
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